

ENTERED

September 12, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

	§	
Candace Michelle Fisher,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Case No. 4:23-cv-02150
v.	§	
	§	
Kilolo Kijakazi,	§	
Acting Commissioner,	§	
Social Security Administration,	§	
	§	
<i>Defendant.</i>	§	

MEMORANDUM AND ORDER

In this social security appeal, Defendant Kilolo Kijakazi, Acting Commissioner of the Social Security Administration, has filed an unopposed motion to reverse the administrative denial of benefits and remand the case for further proceedings. Dkt. 10. As explained below, Defendant's motion is granted.

The relevant statute authorizes this Court to remand a case to the Commissioner for further action in two instances. *See* 42 U.S.C. § 405(g); *Melkonyan v. Sullivan*, 501 U.S. 89, 97-103 (1991). Under the fourth sentence of Section 405(g), a district court may enter "a judgment affirming, modifying, or reversing the decision of the Commissioner ..., with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). The sixth sentence of Section

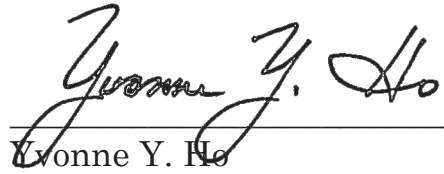
405(g) permits the Court to remand to the Commissioner either (1) “on motion of the Commissioner ... made for good cause shown before the Commissioner files the Commissioner’s answer,” or (2) to “order additional evidence to be taken before the Commissioner” upon finding “there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding.” *Id.*

Here, the sixth sentence of Section 405(g) does not apply. The Commissioner filed her answer before filing her motion to remand. *Compare* Dkt. 8, 9 (answer), *with* Dkt. 10 (motion). Moreover, Plaintiff Candace Michelle Fisher has not moved for consideration of additional evidence. *See, e.g., Sullivan v. Finkelstein*, 496 U.S. 617, 626 (1990) (rejecting applicability of Section 405(g)’s sixth sentence where no new evidence was involved).

The fourth sentence of Section 405(g) therefore governs this request for remand. *See Shalala v. Schafer*, 509 U.S. 292, 297 & n.2 (1993). Based on the motion, Defendant apparently concedes that the record evidence “is insufficient to support the Commissioner’s conclusions and further fact-finding is necessary[.]” Dkt. 10 at 2 (citing *Sullivan*, 496 U.S. at 626).

It is therefore **ORDERED** that Defendant’s unopposed motion to reverse and remand (Dkt. 10) is **GRANTED**. The decision of the Social Security Administration is **VACATED**, and this matter is **REMANDED** for further proceedings.

Signed on September 12, 2023, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Yvonne Y. Ho", is written over a horizontal line.

Yvonne Y. Ho
United States Magistrate Judge